

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

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11 August 1980

MEMORANDUM FOR THE RECORD

FROM: [redacted] Legislation Division  
Office of Congressional Affairs

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SUBJECT: Request for IG Regulation

1. A few weeks ago, John Parisi of the staff of the Senate Governmental Affairs committee requested a copy of the Agency's Inspector General (IG) regulation. The staff wanted to compare the IG's powers with those of the statutory IG. Accordingly, I referred the request to Keith Hall of the staff of the Select Committee on Intelligence.

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2. Upon learning that the regulation was labeled "Administrative-Internal Use Only" and not classified, Hall asked whether it was necessary to tell Parisi he could not have a copy of the regulation. After discussing this with [redacted] Deputy Director for Legislation/OCA, I telephoned Hall to tell him that we preferred not to have copies of the Agency's regulations retained outside of the oversight committees. I also indicated that we would appreciate it if he told Hall he could have a copy of the regulation this time, but that future requests may be handled differently. He agreed to say something to this effect.

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the DOD authorization bill is disposed of.

The campaign financing reform bill is a very important piece of legislation. It goes to the heart of this institution, the legislative branch of Government. It goes to the heart of faith in the legislative branch. It is important, and we are going to have some more cloture votes on that.

The reconciliation measure is something that cannot be avoided.

I am going to make an effort to call up the Grove City legislation.

Mr. President, we also have 13 appropriation bills. There are eight appropriation bills that have come over from the House of Representatives already. We all know that, customarily, appropriation bills originate in the House—not by the Constitution but by custom. I note, in looking at the calendar, that actually nine appropriation bills have now come over from the House—one, the Labor-HHS-Education appropriation bill, having been received in the Senate only yesterday.

So there are nine appropriations bills already here, and hearings have been conducted in the Senate subcommittees on these. But it will take a little time for them to be marked up in committee and reported out to the floor.

We will have a busy time down the road in dealing with these several appropriations bills.

It is my intention and hope that the Senate can indeed send to the President's desk these bills rather than send to his desk one mammoth continuing resolution.

So, we have these and many other important pieces of legislation, including catastrophic illness.

Therefore, those who wish to expedite action on the Bork nomination should help the leadership to expedite action on these bills.

Now, the House has no part in the Bork nomination. That is a matter for the Senate only under the Constitution. The role of advice and consent is given by the Constitution only to this House, the Senate, and it seems to me the logical approach should be that we dispose of the legislation as much as we can before we go to the Bork nomination because legislation when disposed of here in so many instances has to go back to the House, there have to be conferences thereon, and the House has to stay around to dispose of that legislation.

Now, it would be, I think, not very reasonable to come back here and, before we dispose of these major pieces of legislation, we start to debate the Bork nomination. That may take quite a while. I hear that there may be a filibuster and I see nose counts around as to cloture votes, and all that. I am not signing on either way on that yet.

But what I am saying is, it does not seem to be a very reasonable approach to have that nomination come up and take 2 or 3 weeks of the Senate's time,

while we delay legislation on which the House has a role under the Constitution. The House has no role in the advice and consent process.

So it is important that we dispose of the legislation first as much as we can do so.

I urge Senators to help the leadership to move the legislation forward. Let us clear the decks so that when we get to the Bork nomination we can have a debate that is meaningful, that is informative, informative not only to the people but also to ourselves as to the qualifications of this nominee and as to the merits or demerits of confirmation of the nominee.

I implore those who have their feet in cement and who are stiff-jawed about the DOD authorization bill, campaign finance reform, catastrophic illness, and other measures, to let the Senate get on with debate and action on these measures. Let us clear the decks and then we can have the kind of debate that the country should observe and that the Senate is entitled to engage in on the Bork nomination.

I do not think calumny should be heaped on the chairman of the Judiciary Committee, Mr. BIDEN, by those who maintain that there is an inordinant delay here and that it is a calculated delay.

It seems to me, as I say, the Judiciary chairman has moved about right. He is not going too fast and he is not going too slow. At the rate we are getting legislation passed here—I am talking about the major legislation—at the slow pace we are seeing on major legislation that has to be disposed of before we go out sine die this year, if the slow pace continues, the Bork nomination is going to be delayed. Once the committee reports it out, if the committee votes on October 1 and reports that out, the Senate is not going to be ready for it. Why? Because the Senate will not have disposed of the measures I have been talking about one way or the other: The DOD authorization bill; let us get it up. Those who have amendments, offer them. Campaign financing reform bill; let us get cloture on it. Let us get it up. Those who have amendments, offer them.

This delay strategy, in holding back these bills, is pushing them back, back, back into September and then October.

The House is going to see no reason why it should stay around here while the Senate debates the Bork nomination.

I urge, I implore, I beseech, I implore Senators who are holding back and who will not let the Senate work its will on these measures to let the Senate go ahead with these measures so that the Senate, indeed, will be ready at a reasonably early time to take up the Bork nomination and have the kind of debate that it is entitled to.

I want to see this Senate, the full Senate, make the decision on Mr.

Bork. Mr. Bork is entitled to a decision by the full Senate, and if anyone is under the impression that there is a strategy here of delaying this nomination and pushing it over into the next year, there is no such plan, and would have no appeal to this Senator whatsoever. It is entirely alien to my thinking. This Senate in this session should debate and dispose of that nomination one way or the other.

I compliment the chairman, Senator BIDEN. Those who would criticize him should stop and think. I hope they will read my remarks and weigh them. I feel that my remarks represent a reasonable even-handed approach both to the legislation and to the nomination.

And I hope that those who continue to delay will come to their senses, sober up a little bit, and come to an understanding that the thing that may delay the Bork nomination is the very action that they themselves now may be engaging in by delaying action on legislation, delaying action on DOD, delaying action on the catastrophic illness bill, delaying action on the campaign financing reform bill, on prompt payment legislation, and on the State Department legislation.

I hope that, Mr. President, my remarks will be interpreted as positive and helpful on all sides.

Mr. President, what is the situation now as to morning business?

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. GRAHAM). The time for morning business has expired.

Mr. BYRD. Mr. President, I believe I have the leader's time reserved to me; do I not?

The PRESIDING OFFICER. The leader has reserved his time.

Mr. BYRD. Mr. President, I thank the Chair. I now claim that time.

## ARMS TO THE AYATOLLAH

Mr. BYRD. Mr. President, the select committee investigating the Iran-Contra affair has now completed 3 months of public hearings, during which the committee acquitted itself in a distinguished manner. These historic hearings refreshed our country's tradition of open Government and demonstrated that the best way to get to the bottom of controversial activities is to air the facts fully, dispassionately, and carefully—and to let the chips fall where they may.

As the closing statements of the distinguished Senators on the panel indicated, the story which unfolded under the rigorous prodding and hard work of the committee, is a disappointing one, a disturbing one, a disquieting one. It is a story of arrogance, contempt for the law, disdain for the functions and structure of our Government, and of circumvention of the checks and balances which are the

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tried and true test of our constitutional system.

From the outset it was clear from the testimony of General Secord, and particularly the testimony of the operational figures who pursued the arming of the ayatollah, that the principal strategy of these men was to avoid informing the Congress.

It is clear to me that laws were circumvented and loopholes vigorously pursued. It is not possible to legislate integrity, good faith, comity, among the branches of Government. It is not possible to legislate high character. No one can write mutual trust into a statute. Trust has to be earned through integrity.

And trust, like man's soul, once gone, never returns.

I believe that the hearings have revealed that certain fundamental corrections should be made in the laws governing covert operations.

I am sure that the Committee on Intelligence will give its very close attention to these matters in a way that, wherever the laws need to be changed, such changes will be recommended.

It seems to me that the National Security Council and, indeed, any Government entity involved in such operations under the statute governing those operations should be included. And I am talking about the laws governing covert operations.

As I say, I think the National Security Council and any Government entity involved in such operations should be included under the statute and should be required the relevant congressional committees. It is also clear that the manner and timeliness of notification to the Congress of covert operations must be more explicit, and that the use of third countries and private resources to circumvent U.S. law must be prohibited.

The need for these corrections is clear from recent reports of the drafting of Executive orders in the White House to accomplish these goals. This is, of course, an admission of the need to tighten up the law. But, Mr. President, Executive orders are not good enough because they are obeyed only at the discretion and desire of the administration. And we have seen in this administration a determination to circumvent, to run around, to outflank, to overturn, to avoid, to ignore the requirements of the law. In other words, if the law does not permit us to do what we do, find a way around it—wink at it, smile at it, give it a nod. By all means, avoid telling the Congress. Do not let the people's representatives know.

An administration adept at circumventing the laws and driving freight trains through perceived loopholes cannot be expected to police itself. After the fox has eaten the chicken for years on the matter of arming the ayatollah, exchanging arms for hostages, it is a brazen fox, indeed, which now expects the Senate to agree that the fox be deputized to guard the

chicken coop. And so I am pleased that the Iran/Contra Committee is now vigorously pursuing its mandate in Senate Resolution 23, which created the committee, to identify legislative recommendations for the consideration of the intelligence committee, and other relevant Senate committees.

The Secretary of State was a refreshing relief in the parade of difficult witnesses hiding behind belligerent, aggressive attorneys, who, themselves, should be held in contempt. The Secretary of State indicated clearly that the National Security staff had been out of control, was too large, and had usurped many of the functions of the State and Defense Departments. Indeed, this view was reinforced by Secretary Weinberger. Clearly there is something that needs to be done about the size and activities of the NSC staff to return it to its original function as a coordinating body, the purpose of which is to bring the full range of policy options on important matters to the President. We do not need any more renegade cowboy heroes, operating in secret, with bizarre views of what is patriotic and right, and somehow able to command resources from the rest of the executive branch.

Mr. President, the committee has worked hard at unravelling this sad tale of misjudgment and intrigue at the highest levels of our Government. The investigation has also had the salutary effect of stimulating other important lines of inquiry on these matters. Many questions are still not fully answered, and may never be answered. The story still is unfolding. Of particular note is a column by Flora Lewis of the New York Times, which indicates that the secret policy of arming the Ayatollah may even have begun early in the 1980's, and that this bribery and ransom strategy was on the minds of the inner circle of presidential advisors even before his administration took office. What other explanation is there for the allegation Flora Lewis notes, of a meeting between Mr. Allen, the first security adviser to the President, and a campaign official, who apparently met with Iranian officials during that Presidential campaign, and who may have been linked to Israeli shipments of weapons to the Ayatollah in the early 1980's. This opens up disturbing questions about the longevity of this illconceived arms for hostages strategy. It needs further investigation, in my judgment.

I again commend the select committee for its strenuous labors and look forward to its recommendations and report and to any additional investigation it deems appropriate on these matters during the next several months.

Mr. President, I ask unanimous consent that the article by Flora Lewis in the New York Times on August 3, 1987 and an article from the Washington Times, dated August 4, 1987, be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, Aug. 3, 1987]

## THE WILES OF TEHRAN

(By Flora Lewis)

PARIS.—Hashemi Rafsanjani, the Iranian strongman, has now provoked a scandal in France with charges that Prime Minister Jacques Chirac urged Teheran not to release French hostages before the March 16, 1986, elections, which he won.

Mr. Chirac vehemently denies the charge. He did launch an attempt to "normalize" relations once he took office and made several concessions, though not enough to satisfy Teheran. Four hostages were released after he came to power, but another was taken.

It was Mr. Rafsanjani who revealed details of the U.S. arms-for-hostages deal last year. He has hinted he has more such political ammunition. Abolhassan Bani-Sadr, former President of Iran, knows something about it and believes he knows the motives.

Mr. Bani-Sadr, now exiled near Paris, told me Saturday that after Iraq's invasion in September 1980, he was desperate to restore relations with the U.S. so as to buy military spare parts. "We only had 5 to 10 days' supplies," he said. That meant negotiating release of U.S. hostages taken before he became president in January 1980. What he considered a good start was made with the Carter Administration.

"But in October, everything suddenly stopped. My aides found out it was because the group in charge of hostage policy, Rafsanjani, Mohammed Beheshti and Khomeini's son, did not want Carter to win the election. There was a meeting in Paris between a representative of Beheshti and a representative of the Reagan campaign."

Mr. Bani-Sadr did not know their names, nor did he learn until later about an October meeting in Washington of an Iranian envoy with three Reagan workers, Richard V. Allen and Robert McFarlane, who later became national security advisers, and Laurence Silberman.

However, Mr. Bani-Sadr says that these and subsequent events confirm for him persistent rumors that the Reagan campaign offered arms if the hostages were not released until after the 1980 election. In effect, they were released at the same time as Mr. Reagan was inaugurated.

There is no reason to believe that Mr. Bani-Sadr is more dedicated to full candor than American witnesses at Congressional hearings. He offers no firm proof of the charge.

However, arms did start going to Iran from Israel in the first half of 1981, including spare parts for Iran's crippled American fighter planes. This came to light in the last week of July 1981, when a chartered Argentine plane crashed on Soviet territory, apparently off course on its flight from Israel to Iran over Turkey. Mr. Bani-Sadr says the Argentine load of weapons was "the second or third shipment." He was ousted in a coup in July 1981, and has no direct information of what happened later.

The C.I.A. knew about the shipments, Bobby Ray Inman, then deputy director, told me a year or so afterward. It is not clear whether Israel acted with U.S. approval or in apparent violation of its pledge not to transfer U.S. weapons without Washington's permission.

Mr. Bani-Sadr said that when hostage negotiations broke down with the Carter Administration, he warned Ayatollah Khomeini that relations would not improve with Mr. Reagan in power, "they will blame Iran

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for everything." He said the Ayatollah replied, "So much the better, that will bring a crisis." As what he calls an excuse to stall until the U.S. elections, Iran demanded a \$24 billion guarantee from the U.S., dropped soon afterward.

Now, he points out, Mr. Rafsanjani, who has control of the Iranian war effort, is going for total political power, domestically as well. This was indicated in the same July 23 interview with the Teheran paper Eteelaat in which Mr. Rafsanjani made his charges against Prime Minister Chirac. He told the interviewer that it was necessary to unite responsibility for domestic affairs just as for the war.

To achieve his aim, Mr. Bani-Sadr says, Mr. Rafsanjani needs external crises, and he suggests the massacres in Mecca was deliberately provoked to bring a crisis with Saudia Arabia as well as with the U.S. and France. "He is like Hitler, he needs new fronts," he said.

"But I don't understand why Reagan, Chirac, King Fahd play his game. They are actually helping him. It takes two to make a crisis. That's what kidnapping and terrorism is used for, otherwise there would be no point."

Of course, Mr. Bani-Sadr, who claims there was no Iranian-sponsored hostage-taking or terrorism during his 18 months as president, is self-serving. But he does know a lot about the mentality and inner workings of the Iranian regime, and how shrewdly it is able to play on divisions within and among Western states. If Western politicians and governments cooperated honestly, it wouldn't be possible. We do help Teheran to outsmart us.

[From The Washington Times, Aug. 4, 1987]

NEW RULES ON COVERT ACTIVITIES DRAW FIRE

(By Tom Diaz and Bill Gertz)

Senior members of the U.S. intelligence community are upset by a draft presidential executive order on covert operations they say is being "rammed through" the White House by the National Security Council staff.

Opponents say the order, which is nearly completed, will effectively gut the country's ability to carry out all but routine intelligence gathering.

"This order would do [to covert operations] what the old Church committee and the Carter administration tried to do," said one administration source. "It is a 'charter' mentality. You don't ban these operations, but you so restrict them with written rules that they in effect, can't be done."

The new draft is said to still be the subject of argument within the administration, but has the support of National Security Adviser Frank Carlucci and D. Barry Kelly, the NSC intelligence director who has come under fire from critics who say he has retreated from past intelligence policies. Paul S. Stevens, the new NSC legal adviser, also was said to have taken part in drafting the new order.

Some critics charge the White House staff is trying to push the order through for political purposes, aiming at a public relations blitz on "intelligence reform" just before Congress goes into recess.

One senior intelligence official condemned the proposal as "preposterous" and said the restrictions could lead to unauthorized operations of the type organized by Marine Lt. Col. Oliver North, who along with retired Maj. Gen. Richard Secord, supported the Nicaraguan resistance forces.

"This is precisely the kind of thing that creates more freelancing," the official said.

"When the legitimate guys can't do anything, they will turn to extra-legal means."

According to a source who has seen the document—titled "Approval, Review and Notification of Special Activities"—it sets out strict requirements governing all intelligence activities other than "straight collection" of data.

But a White House source said discussions between the White House and Congress on the new covert action guidelines were in the final stages. The new rules could be released as a "rewrite" of Executive Order 12333, which outlines permissible intelligence activities.

"The only issue outstanding is the timing of notification," the source said.

Another White House official opposed to the new intelligence order said the proposal sends the wrong signal to the public in the wake of the Iran-Contra affair. Proper covert action procedures were not followed by Col. North in the Iran arms and Nicaraguan rebel resupply efforts, the official said.

"The president ought to be asserting his powers when he's under the gun, not furthering the erroneous public perception that something was done that was less than constitutional," the official said.

As of last weekend, the document was unclassified, and its supporters intend to issue it as a public document, a plan that also is criticized by some members of the intelligence community.

"Why lay out all of our internal ground rules for the world to see?" said one source.

"Can you imagine the Kremlin doing that?" The source who has read the document said it contains the following major points with which some key members of the intelligence community take exception:

All activity other than intelligence collection will be considered "special" activity, subject to the requirement for a presidential "finding" authorizing the activity. In addition to making counterintelligence a "special" activity subject to such a finding, it also apparently would require presidential findings for very delicate intelligence-gathering operations outside of normal channels.

"Some of these are one-time intelligence coups presented by a special circumstance," said a source familiar with them. "If you have to run these things through the White House bureaucracy, they'll never happen."

The president will be required to sign every finding every year, in effect recertifying the need for the activity. Critics fear the staff time and paper work inevitably required by such a rule will lead to bureaucratic inertia.

"It will become a lot easier to say, 'Heck, they'll never approve that,'" said one source.

The president will be required to notify Congress within 48 hours of every finding, without exception. A congressional source said current language calls for notification within "two working days."

Critics say this would make some operations—such as the 1980 rescue of American hostages hiding in the Canadian Embassy in Tehran—impossible to mount.

Stansfield Turner, CIA director during the Carter administration, told the House Intelligence Committee in April that he opposed such strict reporting procedures since a requirement for advanced notification or a maximum 48-hour delay would have scuttled a covert rescue mission of U.S. hostages in Iran on the drawing board.

Under the 1980 Intelligence Oversight Act, all presidentially approved covert operations must be revealed to select members of Congress "in a timely fashion." The wording was left ambiguous in order to

strike a balance between executive and legislative authority.

State Department and CIA officials testified in June against two House bills that would amend covert action reporting procedures in the 1980 Intelligence Oversight Act. One bill requires advanced notice of all covert action programs, and a second measure would allow for a maximum 48-hour delay.

CIA General Counsel David P. Doherty told the House Intelligence Committee the bills "impermissibly intrude on the president's authority in foreign affairs."

The Iran arms transfers, he said, "stand as an exception to this administration's practices."

All findings will be required to certify that the proposed activity not only conforms to U.S. law, but also to "international law." Critics say the question of what is and is not permitted in the area of covert operations under international law is a subject of intense debate.

"The order doesn't say so, but you know who will make the decision on what international law permits: the State Department," said one source. He implied that the State Department's hostility to covert operations would ensure that few if any covert operations would be found to meet the proposed order's test.

Other less controversial points said to be included in the draft order are:

Requiring presidential findings when special activities are carried out, regardless of the agency involved. This would close the so called "Department of Agriculture" loophole, under which in the past it has been at least theoretically possible to assign a covert mission to an agency other than the Central Intelligence Agency, thereby avoiding the need for a presidential finding authorizing it.

Banning any retroactively effective findings, such as was involved in one of the arms sales to Iran.

Sen. Chic Hecht, Nevada Republican and a member of the Intelligence Committee, said in an interview yesterday the proposed covert action guidelines appear to be an "overreaction" by the NSC staff to the Iran-Contra hearings.

"I was against the Iran-Contra hearings because I said at the start that they would jeopardize our worldwide intelligence apparatus," Mr. Hecht said. "My worst fears have been realized."

Intelligence activities, such as covert action, require professionals to carry them out, said Mr. Hecht, who was once a covert operative.

"We must not tie the hands of those individuals that are seeking to maintain the security of America," Mr. Hecht said. "I hope we don't get to the point where every intelligence agent will have to have a law degree to interpret his job."

The most recent version of Executive Order 12333 was issued by President Reagan in 1981.

It contains a one-paragraph explanation of the role of "Special activities"—the term for covert action programs—that officials say leaves the president with more flexibility than the proposed order.

The order states that the CIA director "shall be responsible to the president and the NSC and shall . . . conduct special activities approved by the President. No agency except the CIA [and the military in time of declared war] may conduct any special activity unless the president determines that another agency is more likely to achieve a particular objective."